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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BARBARA PATTERSON, KELLY ALPERT,
JENNIFER SCHULZ, and STACY POURFALLAH

Appeal 2016-003619
Application 12/358,790
Technology Center 3600

Before ALLEN R. MacDONALD, KARA L. SZPONDOWSKI, and
SHARON FENICK, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's
Final Rejection of claims 32–55. We have jurisdiction under 35 U.S.C.
§ 6(b).

We AFFIRM.

STATEMENT OF THE CASE

Appellants' invention is directed to a system and method for conducting transactions with a financial presentation device linked to multiple accounts. Spec. ¶¶ 2, 6. Claim 32, reproduced below, is representative of the claimed subject matter:

32. A method comprising:

receiving a first authorization request for a first financial transaction, the first authorization request being initiated by a first merchant computer at a first point of sale in response to a presentation of a financial presentation device at the first point of sale;

determining, by at least one computer processor, whether a primary account number in the first authorization request is associated with multiple financial accounts;

selecting, by the at least one processor, a primary account of the multiple financial accounts based on the primary account number in the received first authorization request and a set of predetermined rules for determining which of the multiple financial accounts is to be used to conduct financial transactions;

forwarding the first authorization request, without modifying the primary account number in the first authorization request, to a first issuer of the primary account;

receiving a first authorization response from the first issuer;

forwarding the first authorization response, without modifying the primary account number in the first authorization response, to the first merchant;

receiving a second authorization request for a second financial transaction, the second authorization request being initiated by a second merchant computer at a second point of sale in response to a presentation of the financial presentation device at the second point of

sale, the second authorization request having the primary account number therein;

selecting, by the at least one processor, a secondary account of the multiple financial accounts based on the primary account number in the received second authorization request and the set of predetermined rules;

replacing the primary account number in the second authorization request with a financial account identifier associated with the secondary account; and then

sending the second authorization request with the replaced financial account identifier to a second issuer of the secondary account;

receiving a second authorization response from the second issuer;

determining that the second authorization request message and the second authorization response message are associated with the same transaction utilizing a first unique pairing identifier in the second authorization request message and a second unique pairing identifier in the second authorization response message;

in response to the determining that the second authorization request message and the second authorization response message are associated with the same transaction, replacing the financial account identifier associated with the secondary account in the second authorization response with the primary account number in the second authorization request; and then

sending the second authorization response with the primary account number to the second merchant.

REJECTIONS

Claims 32–55 stand rejected under 35 U.S.C. § 101 as directed to nonstatutory subject matter.

Claims 32–36, 42–47, 51, and 53–55 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Zacharias (US 6,494,367 B1; issued Dec. 17, 2002), Flitcroft et al. (US 7,571,142 B1; issued Aug. 4, 2009) (“Flitcroft”), Ball et al. (US 7,831,521 B1; issued Nov. 9, 2010) (“Ball”), Macklin et al. (US 6,732,919 B2; issued May 11, 2004) (“Macklin”), and Rago (US 5,089,954; issued Feb. 18, 1992).

Claim 52 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Zacharias, Flitcroft, Ball, Macklin, Rago, and Official Notice.

Claims 37, 38, 48, and 49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Zacharias, Flitcroft, Ball, Macklin, and Patterson et al. (US 2008/0010096 A1; issued Jan. 10, 2008) (“Patterson”).

Claims 39 and 50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Zacharias, Flitcroft, Ball, Macklin, Patterson, and Appellants’ Admitted Prior Art (“AAPA”).

Claim 40 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Zacharias, Flitcroft, Ball, Macklin, Patterson, and Curtiss et al. (US 5,712,629; issued Jan. 27, 1998) (“Curtiss”).

Claim 41 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Zacharias, Flitcroft, Ball, Macklin,

Patterson, Curtiss, and Dibiasi et al. (US 2007/0203757 A1; published Aug. 30, 2007).

ANALYSIS

35 U.S.C. § 101 Rejections

Issue 1: Did the Examiner err in finding claims 32–55 are directed to nonstatutory subject matter?

Alice Corp. Pty. Ltd. v. CLS Bank Int’l, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under 35 U.S.C. § 101. In the first step, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept.” *Alice*, 134 S. Ct. at 2355.

The Examiner concludes the claims “are directed to selecting a card for a [point of sale] transaction, a fundamental economic practice.” Final Act. 10; *see* Final Act. 3 (“[t]he [E]xaminer considers the claimed card selection and processing to be one abstract idea”). The Examiner also concludes “[e]very person who has more than one payment card engages in this mental process when making a purchase, if only selecting their primary card.” Ans. 4.

Appellants argue the Examiner’s findings are “based on an oversimplification of the claims that ignores most of the features of the independent claims.” App. Br. 6; Reply Br. 3–4. Appellants further argue “the Examiner provides no more than conclusory statements” and “the claims cannot encompass a ‘fundamental economic practice’ when the Examiner cannot even establish that the concept defined by the claims as a whole can be found in many prior art references.” App. Br. 7.

We agree with the Examiner that claims 32–55 are directed to the abstract idea of selecting a card for a point of sale transaction, a fundamental economic practice. *See* Final Act. 3, 10; Ans. 4. Although the claim language includes more words than the phrase the Examiner used to articulate the abstract idea, this is an insufficient reason to persuasively argue the claims are not directed to an abstract idea. *Cf. Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240–1241 (Fed. Cir. 2016) (“An abstract idea can generally be described at different levels of abstraction. As the Board has done, the claimed abstract idea could be described as generating menus on a computer, or generating a second menu from a first menu and sending the second menu to another location. It could be described in other ways, including, as indicated in the specification, taking orders from restaurant customers on a computer.”).

Moreover, Appellants have not provided explanation contrary to the Examiner’s findings that the claims are a fundamental economic practice or adequately shown the claims are not directed to an abstract idea. We are persuaded that the claims are “directed to” a fundamental economic practice, in that it is much like the concept of intermediated settlement in *Alice* and the concept of risk hedging in *Bilski v. Kappos*, 561 U.S. 593 (2010), and, thus, is an abstract idea beyond the scope of § 101. *See Alice*, 134 S. Ct. at 2356; *Bilski*, 561 U.S. at 611; *see also Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (explaining claims directed to “the mere formation and manipulation of economic relations” and “the performance of certain financial transactions” have been held to involve abstract ideas).

Appellants further argue the claims “are subject to a streamlined eligibility analysis, because the claims do not seek to tie up any judicial exception.” App. Br. 8. According to Appellants, “[claim 32] does not ‘tie up’ any and all ways to ‘select a card for a [point of sale] transaction.’” App. Br. 10; *see* Reply Br. 4–5. Appellants’ preemption argument does not alter our § 101 analysis. We find that this argument is adequately addressed by the remainder of the *Alice* analysis. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.”); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

In the second step of *Alice*, we “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1297–98 (2012)). In other words, the second is to “search for an ‘inventive concept’ – i.e., an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* (quoting *Mayo*, 132 S. Ct. at 1294).

With regard to step 2, the Examiner concludes the claims “do not include additional elements that are sufficient to amount to significantly more than the judicial exception because they amount to no more than:

implementation of the idea on a general purpose computer system.” Final Act. 10.

Appellants argue the last three limitations in claim 32 are “not well-understood, routine and conventional in the field.” App. Br. 11–12. Appellants further argue “the recited claim elements clearly improve the functioning of a generic computer system.” *Id.* at 12. Relying on *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), According to Appellants, “the problems to be solved relates to routing payment transactions to appropriate issuers and providing responses in a computing environment.” *Id.*; see Reply Br. 5–6. Additionally, because “the Examiner relies on no less than **five** prior art references,” Appellants assert “the features of the claims could not possibly be well-understood, routine, and conventional.” App. Br. 12–13.

We are not persuaded by Appellants’ arguments and agree with the Examiner’s findings and conclusions. See Final Act. 3–4, 10; Ans. 5–6. Although the second step in the *Alice/Mayo* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 134 S. Ct. at 2355. A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. See *Mayo* 132 S. Ct. at 1301, 1304; *Parker v. Flook*, 437 U.S. 584, 588–595 (1978). Appellants’ arguments regarding the number of references relied upon by the Examiner in the obviousness analysis, therefore, are not persuasive. “The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no

relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981); *see also Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016) (“under the *Mayo/Alice* framework, a claim directed to a newly discovered law of nature (or natural phenomenon or abstract idea) cannot rely on the novelty of that discovery for the inventive concept necessary for patent eligibility”).

Appellants have not adequately explained how the claims are performed such that they are not routine, conventional functions of a generic computer. The functionality performed in the claims, i.e., receiving, processing, and sending data, are routine, conventional, and well-known functions, and require nothing more than a generic computer performing generic computer functions.

We agree with the Examiner that the limitations amount to no more than “implementation of the idea on a general purpose computer system.” Final Act. 10; *see* Ans. 4. Appellants have not directed us to any indication in the record that any specialized computer hardware or other ‘inventive’ computer components are required. *See* Spec. ¶¶ 37–42, Fig. 2. Rather than reciting additional elements that amount to “significantly more” than the abstract idea, the pending claims, at best, add only a “computer,” “processor,” and/or “memory,” i.e., generic components (*see* Spec. ¶¶ 37–39, Fig. 2), which do not satisfy the inventive concept. *See, e.g., DDR Holdings*, 773 F.3d at 1256 (internal quotation marks omitted) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible. The bare fact that a computer exists in the physical rather than purely conceptual realm is

beside the point.”). Nor have Appellants adequately shown why the claim elements “clearly improve the functioning of a generic computer system.” *See* App. Br. 12; Ans. 5.

Moreover, contrary to Appellants’ arguments (App. Br. 12), the claims at issue here are not like the claims at issue in *DDR Holdings*. The claims in *DDR Holdings* were directed to retaining website visitors, and in particular to a system that modified the conventional web browsing experience by directing a user of a host website who clicks an advertisement to a “store within a store” on the host website, rather directing the user to an advertiser’s third-party website. *DDR Holdings*, 773 F.3d at 1257–1258. The Court determined “the claims address a business challenge (retaining website visitors) [that] is a challenge particular to the Internet.” *Id.* at 1257. The Court also determined that the invention was “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks,” and that the claimed invention did not simply use computers to serve a conventional business purpose. *Id.* Rather, there was a change to the routine, conventional functioning of Internet hyperlink protocol. *Id.*

Here, as the Examiner points out (Ans. 6), selection of a card for a point of sale transaction and processing the transaction is not a challenge particular to computer networks, nor is it necessarily rooted in computer technology. *See also* Spec. ¶¶ 4–6. Rather, it is an implementation on generic computer components of the abstract idea itself. Even accepting Appellants’ assertion that the claims address a challenge particular to computer networks, we are not persuaded that they do so by achieving a result that overrides the routine and conventional use of the recited devices

and functions. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715–718 (Fed. Cir. 2014).

We have also considered Appellants’ argument that the claims of the Zacharias patent “indicat[e] that the subject matter of the current patent is actually patent eligible.” Reply Br. 4. The Court of Customs and Patent Appeals, predecessor court to the Court of Appeals for the Federal Circuit, held that “[e]ach case is determined on its own merits. In reviewing specific rejections of specific claims, this court does not consider allowed claims in other applications or patents.” *In re Gyurik*, 596 F.2d 1012, 1018 n.15 (CCPA 1979) (citations omitted). Accordingly, we will not consider the allowed claims in other patents when determining whether the present claims are directed to non-statutory subject matter.

The claims when viewed as whole are nothing more than performing conventional processing functions that courts have routinely found insignificant to transform an abstract idea into a patent-eligible invention. As such, the claims amount to nothing significantly more than an instruction to implement the abstract idea on a generic computer, which is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360. Therefore, we are not persuaded the Examiner erred in rejecting claims 32–55 under 35 U.S.C. § 101.

35 U.S.C. § 103(a) Rejections

Issue 2: Did the Examiner err in combining Zacharias, Flitcroft, Ball, Macklin, and Rago?

The Examiner finds “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Zacharias with

the card remapping of Flitcroft with the motivation of reducing fraud.” Final Act. 17–18; *see also* Ans. 8.

Appellants argue “there is no rational underpinning to support the legal conclusion of obviousness.” App. Br. 14. Specifically, Appellants argue “one would not have combined Zacharias with Flitcroft in the manner proposed by the Examiner, because the proposed modification would have made the primary reference unsatisfactory for its intended purpose and the modification is not rational.” *Id.* at 13. According to Appellants,

if one were to substitute Flitcroft’s limited use credit card number for Zacharias’ [sic] Supracard, this would result in a ‘limited use Supracard’ which would be completely contrary to the purpose of the Supracard, which is to have a single static card which can be linked to a number of secondary accounts.

Id. at 14. Appellants argue because “the Supracard number [in Zacharias] is already secure . . . it would not make sense to make the Supracard number a limited use card number [as in Flitcroft.]” *Id.* at 15.

We are not persuaded by Appellants’ arguments because they do not persuasively address the Examiner’s rejection. The Examiner relies on Flitcroft for its account number remapping and proposes modifying Zacharias with the account number remapping. Final Act. 17–18; *see also* Ans. 8. The Examiner’s rejection is not based upon a substitution of Flitcroft’s limited use credit card number for Zacharias’ Supracard, but rather on the combined teachings of the references. It is well established that the obviousness inquiry does not ask “whether the references could be physically combined but whether the claimed inventions are rendered obvious by the teachings of the prior art as a whole.” *In re Etter*, 756 F.2d 852, 859 (Fed. Cir. 1985) (en banc); *see also In re Keller*, 642 F.2d 413, 425

(CCPA 1981). Appellants have not shown that combining the prior art was “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418–419 (2007)). We find that the Examiner has articulated how the claimed features are met by the proposed combination of the reference teachings with some rational underpinning, consistent with the guidelines stated in *KSR*. See Final Act. 17–18; Ans. 8.

Appellants further argue “the Examiner has made an inconsistent mapping.” App. Br. 15. Specifically, Appellants argue the Examiner “is simultaneously mapping the primary account number to a ‘standard credit card’ of Macklin and to a ‘limited use’ card of Flitcroft depending on what mapping best fits his argument at the time.” *Id.* at 16; see Reply Br. 6–7.

We are not persuaded by Appellants’ arguments. Despite the differing terminology used in the references, Flitcroft and Macklin are both referring to a primary account. See Flitcroft, col. 24, ll. 64–66 (“the additional credit card number would be matched to the customer account and the account would be debited accordingly”); col. 27, ll. 12–19 (“a database look-up procedure determines the associated master account number and transmits the number (i.e. the master account number) back into the processing system . . . Once the master account number is substituted for the limited use number a number of additional steps are required.”); Macklin, col. 3, ll. 64–65 (“has selected an American Express® credit card **305** as the primary credit card”); Fig. 3.

With respect to the Examiner’s proposed combination of Macklin with the other references, Appellants argue “making this modification would

defeat the primary purpose of Zacharias” because “Zacharias’ system must modify the Supracard number with the consumer’s selected account number by using a card translator, or else it will not work.” App. Br. 16.

The Examiner finds “it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the references with the primary multi use card of Macklin with the motivation of reducing the number of credit cards carried.” Final Act. 19. The Examiner further finds:

Simply substituting the Supracard [of Zacharias] with an actual primary card with associated primary account as taught by Macklin would achieve a system where both the primary account could be used directly or secondary accounts could be used instead. Presumably, the primary account could be the consumer’s selected account or a default of choice.

Ans. 12.

We are not persuaded by Appellants’ arguments and agree with the Examiner’s findings. *See* Ans. 12. Zacharias is directed to “[a] multi-application card for providing secure access to multiple card accounts.” Zacharias Abstract. As such, we are not persuaded substituting a primary account number for the Supracard number of Zacharias would defeat this primary purpose. *See* Ans. 12. Moreover, we find that the Examiner has articulated how the claimed features are met by the proposed combination of the reference teachings with some rational underpinning, consistent with the guidelines stated in *KSR*. *See* Final Act. 19; Ans. 12.

With respect to the Examiner’s proposed combination of Rago with the other references, Appellants argue such a modification would “also

defeat the intended purpose of Zacharias' system as it would make Zacharias' card translator 225 obsolete." App. Br. 17.

Zacharias' card translator "manages the database of Supracard information." Zacharias, col. 4, ll. 52–53; col. 8, ll. 32–42. We agree with the Examiner that Appellants have not sufficiently explained "why matching messages with identifiers would be incompatible with card translation." *See* Ans. 13. Accordingly, with respect to Rago, we also find the Examiner has articulated how the claimed features are met by the proposed combination of the reference teachings with some rational underpinning, consistent with the guidelines stated in *KSR*. *See* Final Act. 20–21; Ans. 12.

Issue 3: Did the Examiner err in finding the combination of Zacharias, Flitcroft, Ball, Macklin, and Rago teaches or suggests

determining that the second authorization request message and the second authorization response message are associated with the same transaction utilizing a first unique pairing identifier in the second authorization request message and a second unique pairing identifier in the second authorization response message; [and] in response to the determining that the second authorization request message and the second authorization response message are associated with the same transaction, replacing a financial account identifier associated with the secondary account in the second authorization response with the primary account number in the second authorization request; and then sending the second authorization response with the primary account number to the second merchant,

as recited in independent claim 32 and commensurately recited in independent claims 42 and 43?

Appellants argue "even assuming, *arguendo*, that the 'transaction identifier' in Rago is a 'pairing identifier,' it is not present in an

‘authorization request message’ and an ‘authorization response message,’ and it is certainly not used to determine if an account number should be placed in an authorization response message.” App. Br. 18. Appellants further argue “[t]here is no disclosure in the combination of Zacharias and Rago of replacing a secondary account number with a primary account number in an authorization response message in response to determining that unique pairing identifiers in authorization request and response messages are associated with the same transaction.” *Id.* at 19. Appellants also argue Flitcroft does not teach or suggest “replacing a financial account identifier associated with the secondary account in the second authorization response with the primary account number in the second authorization request; and then sending the second authorization response with the primary account number to the second merchant,” because “the ‘limited use’ credit card number of Flitcroft cannot be a real credit card number and the primary account number recited in claim 32 must be a real account number.” *Id.*

We are not persuaded by Appellants’ arguments because they do not address the combination of references as relied upon by the Examiner. *See, e.g.,* Final Act. 11–21; Ans. 8–14. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Appellants attack the references in isolation, or in groups of two, while failing to persuasively address the combination of references the Examiner relies upon.

For example, the Examiner relies on Zacharias to teach or suggest “*sending the second authorization request . . .*” and “*receiving a second authorization request . . .*” Final Act. 14. Rago is relied upon to teach or

suggest using a unique identifier for matching request/response messages. Final Act. 20; Ans. 14. Therefore, Appellants' argument that Rago's identifier "is not present in an 'authorization request' message' and an 'authorization response message'" (App. Br. 18) is not persuasive because it is not responsive to the Examiner's rejection because it ignores the Examiner's reliance on Zacharias.

The Examiner also relies on Zacharias to teach or suggest "replacing the financial account identifier associated with the secondary account in the second authorization response with the primary account number in the second authorization request." Final Act. 13. However, the Examiner also relies on Flitcroft to teach or suggest that portion of the limitation, as well as the latter portion of the limitation, "in response to the determining that the second authorization request message and the second authorization response message are associated with the same transaction." Final Act. 16–18. Therefore, Appellants' argument that "[t]here is no disclosure in the combination of Zacharias and Rago of replacing a secondary account number with a primary account number in an authorization response message in response to determining that unique pairing identifiers in authorization request and response messages are associated with the same transaction" is not persuasive because it ignores the inclusion of Flitcroft in the combination. App. Br. 19. Similarly, Appellants' arguments that Rago's identifier "is certainly not used to determine if an account number should be placed in an authorization response message" is not persuasive because it does not address the Examiner's reliance on Zacharias and Flitcroft. App. Br. 18. Likewise, Appellants' arguments that Flitcroft does not teach or suggest "replacing the financial account identifier associated with the

secondary account in the second authorization response with the primary account number in the second authorization request; and then sending the second authorization response with the primary account number to the merchant,” ignores the Examiner’s reliance on Zacharias. App. Br. 19.

Given the disclosures relied upon by the Examiner in Zacharias, Flitcroft, and Rago, we agree with the Examiner (Final Act. 11–21; Ans. 8–14) that these references, as combined by the Examiner, teach or suggest the disputed limitations. *See Keller*, 642 F.2d at 425 (“the test [for obviousness] is what the combined teachings of [the] references would have suggested to those of ordinary skill in the art.”)

Issue 4: Did the Examiner improperly use hindsight?

Appellants contend “improper hindsight was used to reject the present claims.” App. Br. 19–22. Appellants argue “the Examiner cannot reasonably conclude that one would have taken the tortuous path set forth above with ‘only’ knowledge of the person of ordinary skill in the art, and without looking at Appellants’ disclosure.” *Id.* at 22.

Appellants’ arguments are not persuasive because Appellants do not identify, nor do we discern, any knowledge that the Examiner relied upon that was gleaned only from Appellants’ disclosure and that was not otherwise within the level of ordinary skill at the time of the invention. Thus, the Examiner is correct to note that so long as a conclusion of obviousness is based on a reconstruction that “takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from [Appellants’] disclosure, such a reconstruction is proper.” Ans. 6–7

(citing *In re McLaughlin*, 443 F.2d 1392 (CCPA 1971)). Moreover, the number of references relied upon by the Examiner in the obviousness rejection is not pertinent to the analysis. See *In re Gorman*, 933 F.2d 982, 986 (Fed. Cir. 1991) (affirming obviousness rejection over thirteen references) (“The criterion . . . is not the number of references, but what they would have meant to a person of ordinary skill in the field of the invention.”).

Accordingly, for all of the foregoing reasons (Issues 2–4), we are not persuaded the Examiner erred in rejecting independent claims 32, 42, and 43 under 35 U.S.C. § 103(a), and, therefore, sustain those rejections. Appellants do not separately argue dependent claims 33–38, 40, 41, 44–49, 51, and 53–55, so we sustain the Examiner’s 35 U.S.C. § 103(a) rejections of those claims for the same reasons.

Issue 5: Did the Examiner err in taking Official Notice that “sequential values,” as recited in claim 52 are old and well known in the art?

Claim 52 recites “The method of claim 32 wherein the first unique pairing identifier and the second unique pairing identifier are sequential values.” The Examiner finds it is “old and well known to uniquely identify items with sequential values.” Final Act. 31.

Appellants contend “in response to Appellants’ traversal of the taking of Official Notice, the Examiner has provided absolutely no documentary evidence that the feature in dependent 52 is actually well known in the prior art.” App. Br. 23. Appellants further argue “[t]he facts which the Examiner asserts are well-known, are not capable of instant and unquestionable demonstration as being well-known, and without being provided a proper

basis for assessing the Official Notice, Appellants have not been given the opportunity to properly traverse the rejection.” *Id.* at 24.

We are not persuaded. Rather, we agree with the Examiner that Appellants did not adequately traverse the officially noticed facts in their response dated February 2, 2015. *See* Ans. 15. MPEP 2144.03 requires that “[t]o adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well known in the art.” Appellants simply stated “Applicants traverse the taking of Official Notice and request that a reference be supplied to support the Examiner’s allegation.” February 2, 2015 Response, 23; *see also* Ans. 15. An adequate traverse must “contain adequate information or argument so that on its face it creates a reasonable doubt regarding the circumstances” justifying Examiner’s notice of what is well known to one of ordinary skill in the art. *See In re Boon*, 439 F.2d 724, 728 (CCPA 1971). Therefore, we are not persuaded the Examiner’s reliance on Official Notice is improper.

Accordingly, we are not persuaded the Examiner erred in rejecting dependent claim 52 under 35 U.S.C. § 103(a), and, therefore, sustain those rejections.

Issue 6: Did the Examiner err in finding the combination of Zacharias, Flitcroft, Ball, Macklin, Rago, and AAPA teach or suggest “wherein the set of predetermined rules comprises a condition that all transactions for travel and restaurant services be conducted using the primary account,” as recited in dependent claims 39 and 50?

The Examiner finds the references do not explicitly teach restaurant services, but is obvious in view of AAPA, which “teaches that restaurant services are old and well known as a source of payment transactions.” Final Act. 35. The Examiner further finds Ball generally speaks to tying a specific account to a specific transaction type. Final Act. 35; *see* Ball, col. 4, ll. 47–54. Accordingly, the Examiner finds it is “well within the design choice of one of ordinary skill to choose the same account to pay for more than [one] service.” Final Act. 35. Further, the Examiner finds “[a]ll the claimed elements were known in the prior art and one of ordinary skill in the art at the time of the invention could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results.” Final Act. 35–36.

Appellants argue “a ‘design choice’ is a conclusion and is not a reason why the skilled artisan would have modified the prior art in the manner proposed by the Examiner.” App. Br. 25.

We are not persuaded by Appellants’ arguments. As set forth by the Examiner, Ball teaches predetermined rules for tying a specific account to a specific transaction type. *E.g.*, Ball, col. 4, l. 42 (“for merchant B, use checking account to get [a] discount”); col. 4, ll. 51–52 (“for airline tickets, use checking account; otherwise use credit card A”), col. 4, l. 53 (“for gas, use credit card A; otherwise use credit card B”). Although Ball does not explicitly describe rules defining restaurant services, “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. 398 at 421. Appellants have not presented persuasive explanation or evidence to show that including restaurant services would have been “uniquely challenging or difficult for one of ordinary skill in the art” or

“represented an unobvious step over the prior art.” *Leapfrog*, 485 F.3d at 1162 (citing *KSR*, 550 U.S. at 418–19).

Accordingly, we are not persuaded the Examiner erred in rejecting dependent claims 39 and 50 under 35 U.S.C. § 103(a), and, therefore, sustain those rejections.

DECISION

The Examiner’s 35 U.S.C. § 101 rejection of claims 32–55 is affirmed.

The Examiner’s 35 U.S.C. § 103(a) rejection of claims 32–55 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED